NO. 81-2273

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

RONALD CAMINITA,

Petitioner,

versus

STATE OF LOUISIANA,

Respondent.

ON APPLICATION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The United States Court of Appeals For
The Fifth Circuit

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STATEMENT OF THE CASE

On October 21, 1979, the petitioner, Ronald Caminita, was arrested and charged with armed robbery, a violation of La. R. S. 14:64, and on October 26, 1979, he was charged by bill of information with this same offense. Shortly thereafter, the petitioner's attorney, Mr. Frank Uddo, began making energetic efforts to persuade the District Attorney's Office to reduce this charge to simple robbery, a violation of La. R. S. 14:65. These efforts included discussions with both the District Attorney and the First Assistant District

Attorney and all were unsuccessful.

On the night of February 15, 1980, two weeks before the scheduled trial date, Mr. Uddo happened upon both the Assistant District Attorney handling the case and his immediate supervisor at a local restaurant. Although the parties involved give differing accounts as to what transpired that night, it is clear that the case was discussed and Mr. Uddo apparently left with the impression that the State would accept a plea to simple robbery. The following morning, however, Mr. Uddo was informed by the District Attorney's Office that a plea to simple robbery was not acceptable.

Mr. Uddo, nonetheless, persisted in his attempt to have his client plead guilty to the lesser charge and on the day of trial, March 6, 1980, tendered a plea of guilty to simple robbery. This was objected to by the State and the petitioner's subsequent motion to quash the bill of information based on the State's alleged non-compliance with their previous plea-bargain agreement was denied. The petitioner was granted a continuance of the trial and on March 11, 1980 the petitioner was tried before a twelve member jury and found guilty of armed robbery. Petitioner was sentenced to a term of five (5) years imprisonment at hard labor.

Petitioner appealed his conviction and sentence to the Louisiana Supreme Court which affirmed both on March 1, 1982 and a rehearing was denied.

ARGUMENT

The gist of petitioner's argument is that if, in the course of plea negotiations, the State consents to accept a certain plea, it is irrevocably bound to that decision regardless of whether or not the defendant has done anything in reliance upon it. In other words, the defendant may withdraw from a plea bargain at any time until the plea is entered yet the State may not. This argument is premised on the belief that a defendant has a constitutional right to specific performance of unconsummated plea bargains. Although this novel argument has been accepted by the Fourth Circuit Court of Appeals in *Cooper v. United States*, 594 F.2d 12 (4th Cir. 1979), no other circuit has adopted this rationale. The Louisiana Supreme Court was correct in rejecting this argument.

In rejecting petitioner's request for specific performance of the prosecutor's alleged agreement to accept a plea to simple robbery, the Louisiana Supreme Court stated that:

> "Absent any showing of detrimental reliance prejudicial to the substantial rights of the accused, or evidence of devious practice by the government such as bad-faith negotiation designed to psychologically probe the defense or gain some other improper advantage, the government remains free to withdraw from a plea agreement up to the time the plea is entered."

This holding is in accord with this Court's seminal case on plea bargaining, *Santobello v. New York*, 404 U.S. 257, 92 S. Ct. 495, 30 L. Ed. 427 (1971), in which this Court recognized the basic estoppel principle that when a defendant pleads guilty in reliance on an agreement with the

prosecutor, that promise must be fulfilled. Crucial to that principle is that the defendant has suffered some sort of detrimental reliance, specifically in that case, a guilty plea. "A constant factor is that when a *plea* rests in any significant degree on a promise or agreement of the prosecution, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." 404 U.S. at 264, 92 S. Ct. at 499, 30 L. Ed. at 431.

As the broad language in the Louisiana Supreme Court opinion suggests, *Santobello* could conceivably be extended to encompass a situation where the defendant has not yet entered a plea but has relied on the bargain to such an extent that substantial rights have been prejudiced. Envisioned, for example, is the situation where a defendant, relying on a plea proposal, fails to call witnesses who would otherwise be available and is then forced to trial without them. *United States v. Kagema*, 11 M. J. Reporter 28 (Military App. 1981). Again, what is important is that the defendant has done or refrained from doing something in reliance on the prosecutor's offer and has subsequently been hurt by this.

In the present case the petitioner has not, nor could, allege any detrimental reliance on the District Attorney's alleged agreement to accept his plea to simple robbery. The damage envisioned in *Santobello*, the guilty plea, was not suffered nor was there any other type of detrimental reliance. Regardless of what transpired on the night of February 25, petitioner's attorney was informed the next day, well in advance of the trial date, that no deal was available. When, on the day of trial, petitioner's motion to quash was denied, petitioner was granted a continuance of his trial. Therefore the petitioner cannot argue that due to his reliance on the government's plea offer he was forced to proceed to trial unprepared.

Petitioner can complain of no harm whatsoever, except perhaps, that his hopes were dashed when the prosecutor refused to accept his plea and those are hardly the the substantial rights meant to be protected by the Constitution. After learning of the prosecutor's refusal to accept his plea to simple robbery, petitioner was in the same exact position as he was before any negotiating began. This Court has specifically stated that a defendant has no right to plea bargain, therefore petitioner was not deprived of any right either before or after the plea bargain fell through. *Weatherford v. Bursey*, 429 U.S. 547, at 361, 97 S. Ct. 837 at 846, 51 L.Ed.2d 30 at 39 (1977). Petitioner's constitutional right to trial by jury was always available and was never impaired. "It is a novel argument that constitutional rights are infringed by trying a defendant rather than accept his plea of guilty." 429 U.S. at 561, 97 S. Ct. at 846, 40 L.Ed. 2d at 39.

The petitioner also contends that the State's retraction of the plea proposal caused the defendant to lose confidence in his counsel's capability, such that the defendant's Sixth Amendment right to effective counsel was violated. This argument is ridiculous for the appropriate focus for determining whether the right to effective counsel has been violated is on defense counsel and his performance rather than on defendant's perception of defense counsel. *Government of Virgin Islands v. Scotland*, 614 F.2d 360 at 363 (3rd Cir. 1980). The incongruous result of petitioner's claim would be that any time a defendant was disappointed in the result of his counsel's legitimate endeavors on his behalf he could claim ineffective assistance of counsel. It may also be noted that although the petitioner repeatedly claims that the Louisiana Supreme Court ignored this argument in their holding, the petitioner did not raise it until his petition for rehearing.

CONCLUSION

The ruling of the Louisiana Supreme Court was correct and in accord with the principles set forth by this Court. These principles are well established and there is no conflict of law that is in need of resolution. Mr. Caminita's petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

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CERTIFICATE OF SERVICE

I certify that a copy of this Opposition To Application For Writ of Certiorari has been sent to:

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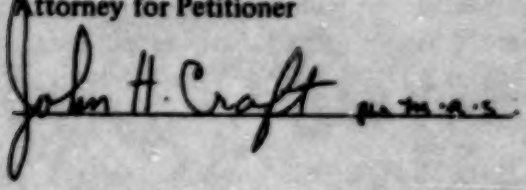

New Orleans, Louisiana, this

1st day of October, 1982.